IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7540 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL P SHAH DECEASED BY HIS LEGAL HEIRS AND L/R

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7540 of 1997

MR MIHIR H JOSHI for Petitioners No. 1-2

MS DS PANDIT ASSTT GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 1-3

MR MUKESH R SHAH for Respondent No. 2

MS KJ BRAHMBHATT for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/11/2001

ORAL JUDGEMENT

Heard Mr.Mihir Joshi, learned advocate appearing

on behalf of the petitioner and Ms.D.S.Pandit, learned AGP for the respondent No.1 so also Mr.M.R.Shah, learned advocate for respondent No.2 and Ms.K.J.Brambhatt, learned advocate for respondent No.3.

In the present petition, RULE has been issued by this Court on 24th December, 1997 and ad-interim relief in terms of para-9[C] has been granted in favour of the petitioner. Thereafter, interim relief as prayed for in terms of para-9[B] of the petition has been granted by this Court. Rule was issued which was made returnable on 16th February, 1998.

The brief facts giving rise to the present petition are as under :-

The petitioners were original joint owners of the property bearing revenue Survey No.997 at Dahod. Under the above referred Town Planning Scheme, 5371 sq.mtrs.of the said land was acquired which was allotted to final plot No.69/2. The aforesaid Final Plot No.69/2 was allotted to one Mohammadbhai Patel. The petitioners were allotted final plot No.66 admeasuring 17551.43 sq.mtrs which included the part of Survey No.997 of the petitioners and Survey No.995/A/2. However, according to the petitioners, respondents have failed and neglected to hand over vacant and peaceful possession of the land bearing revenue Survey No.995/A/2 admeasuring 1787.56 sq.mtrs. According to the petitioners by two letters dated 25th March, 1992 and 20th August, 1997 the petitioners requested and reminded respondents to enforce the Scheme in its totality and not apply it selectively. However, despite aforesaid demand, the respondents, more particularly respondent No.2 who is enjoined with the duty under the Act to enforce the Scheme, have failed and neglected to compensate the petitioners for acquisition of their land by handing over the vacant and peaceful possession. However, the petitioner also apprehend that the land owner would create third party rights and the respondent No.2 is likely to seek modification of the Scheme in a manner as would adversely affect the petitioners. Therefore, the petitioners have by way of present petition challenged the inaction of the respondents in discharging their duties under the provisions of Gujarat Urban Development Act and Rules and enforce the provisions of T.P.Scheme No.1 by handing over the peaceful and vacant possession of the reconstituted Plot No.66 admeasuring 17,551.43 sq.mtrs to the petitioners.

I have considered the submissions of the learned

advocates for the respective parties. However, no reply has been filed by any of the respondents against the present petition. In light of the fact that inspite of two notices dated 25th March, 1992 and 20th August, 1997 addressed by the petitioners to the respondent No.2, no steps have been taken by the respondent No.2. Learned Advocate Mr.Joshi appearing on behalf of the petitioners has submitted that in view of decision given by the Apex Court in case of MUNICIPAL CORPORATION FOR GREATER BOMAY AND OTHERS VS. ADVERSE BUILDERS reported in AIR 1972 SC pg.793, he submitted that it is the duty of the respondent No.2 to implement the scheme effectively and handover the possession of the reconstituted final plot to the petitioners. He also relied upon the observations made by the Apex Court in the above referred case, which runs as under :-

"There was no specific provision under Section 53 directing the local authority to hand possession of the final plots, but in our opinion, what was implicit in the scheme when the original plots were reconstituted and the reconstituted plots were allotted to the owners of the original plots".

Relying on aforesaid observations, Mr.Joshi, learned advocate has submitted that some suitable directions may be issued on the respondent No.2 considering the observations made by the Apex Court, to take effective steps for handing over the possession of the land in question in accordance with law to the petitioner.

Learned advocate Ms.K.J.Brambhatt, appearing on behalf of the respondent No.3 has submitted that the respondent No.2 should pass orders in accordance with law after giving an opportunity to the respondent No.3. As against the submissions of Ms.Brambhatt, learned advocate Mr.Joshi has submitted that as such no opportunity is required to be given under the Act as the scheme is already finalised and the respondent No.3 must have been heard by the respondent authorities at the relevant time.

Considering the submissions of the learned advocates for the parties and having regards to the facts and circumstances of the case, according to my opinion, two notices were served by the petitioner to the respondent No.2 but till date no reply has been filed by the present petition nor any decision is taken by the respondent No.2 against said two notices. Therefore, it is the duty of the respondent No.2 being the authority

under the Town Planning Act to take appropriate steps and to pass orders in accordance with law when the petitioners have approached pointing out their grievance for not implementing the scheme in totality. Therefore, considering all these aspects of the matter, it is directed to the respondent No.2 to consider said two notices submitted by the petitioners dated 25th March, 1992 and 20th August, 1997 and after taking into consideration the observations of the Apex Court in reported decision AIR 1972 pg.793, shall pass appropriate orders and take effective steps in accordance with law for enforcing the scheme in question within period of two months from the date of receiving the writ of this order.

However, it is further directed that ad-inteirm relief granted by this Court on 24th December, 1997 and 27th January, 1998 shall remain continue till this order is complied with by the respondent No.2. In light of above observations and directions, present petition is disposed of accordingly. Rule stands discharged. Direct Service is permitted.

Date : 2-11-2001 [H.K.Rathod, J.]

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